

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,        )       Application No. NUSF-4  
on its own motion, seeking to        )  
determine the level of the fund        )       PROGRESSION ORDER #4  
necessary to carry out the        )  
Nebraska Telecommunications        )  
Universal Service Fund Act        )  
beginning July 1, 2000.        )       Entered March 28, 2000

BY THE COMMISSION:

1. On March 11, 1999, the Nebraska State Legislature passed Legislative Bill 514, which was subsequently signed into law by the Governor on March 18, 1999. This legislative bill, titled the Nebraska Telecommunications Universal Service Fund Act (hereinafter, the "State Act"), is codified in sections 86-1401 through 86-1410 of the Nebraska Revised Statutes.

2. This docket was opened on April 15, 1999, on the Commission's own motion, to determine the level of the fund necessary to carry out the requirements of the State Act. On June 2, 1999, this Commission, upon review of the testimony and exhibits filed in this matter, set the Nebraska Universal Service Fund (hereinafter, the "NUSF") surcharge at 6.95 percent for the first NUSF fiscal year of fund operations, from July 1, 1999 through June 30, 2000.

3. As part of its ongoing administration of the NUSF, the Commission determined that regular review hearings are in the best interest of Nebraska consumers. Accordingly, the Commission set and held a public hearing on November 17, 1999, at 10:00am, in the Commission Hearing Room to address the administration of the NUSF.

O P I N I O N S     A N D     F I N D I N G S

**A. NUSF Surcharge Assessment on Wholesale Services**

4. The Commission re-affirms its finding in C-1628 that the NUSF surcharge should not be assessed on wholesale telecommunications services. The Commission defines wholesale telecommunications as services, one telecommunication carrier purchases from another telecommunication carrier, directly used to provide other telecommunications services subject to the NUSF surcharge. This exemption would typically apply to both access services and interconnection services and encompasses all telecommunications carriers including both incumbent and competitive local exchange carriers, interexchange carriers, and commercial mobile radio service carriers, including paging providers. While telecommunication carriers should assess the NUSF surcharge on retail services, such as basic local exchange, long distance and CMRS, provided to other telecommunication carriers, the NUSF surcharge should not be applied on wholesale services carriers directly used to provide intrastate retail

telecommunications services, such as trunks provided to paging providers.

#### **B. Monthly Remittance Due Date**

5. The Commission finds it in the public interest to continue to require monthly remittances be due on the 15<sup>th</sup> of the month. Moving the remittance deadline back ten days is estimated to cost the NUSF more than \$85,000 per year in interest. However, the Commission recognizes that allowing companies only fifteen days, following the end of a month, to determine billed revenue and remit the appropriate amount to the NUSF can result in some hardship. Therefore, companies may use estimated amounts to remit for a month and then true-up that amount the following month. Accordingly, the NUSF remittance worksheet will be amended to facilitate this new process.

#### **C. Payphone Coin Services**

6. The Commission reconsiders and finds that payphone coin revenue should be exempted from the NUSF surcharge. Therefore beginning on July 1, 2000, payphone service providers shall stop collecting the NUSF surcharge on calls placed from payphones using coins and local exchange carriers shall begin collecting the NUSF surcharge on the basic local exchange line provided to payphone service providers. In reaching this determination, the Commission continues to believe payphone coin services to be substantially an intrastate retail telecommunications service. However, given that an acceptable alternative is available that will have little to no impact on the NUSF and will not disadvantage one class of carrier versus another, the Commission believes this modification to be in the public interest.

7. A payphone service provider uses a basic local exchange business line provided by a local exchange carrier. Payphone customers typically deposit \$0.35 in the payphone to make local coin calls. The current NUSF surcharge of 6.95 percent will now be assessed on the basic local exchange business rates billed to payphone providers. These rates average approximately \$27.50 per month, resulting in a \$1.91 per month remittance into the NUSF. Under the previous method of assessing coin revenue, each \$0.35 call would result in \$0.02 per call remittance into the NUSF. Therefore, if, on average, there are 95 or fewer local coin calls per month from each payphone, this change will result in more NUSF revenue. Conversely, if, on average, there are more than 95 local coin calls per month from each payphone, this change will result in less NUSF revenue. The Commission believes this change will have a negligible impact on remittances to the NUSF.

8. This exemption applies to all coin revenue derived from payphones, including coin revenue derived from long distance calls. However, all other long distance calls, such as calling card, 800, etc, placed from payphones will continue to be subject to the NUSF surcharge. Absent evidence to the contrary, the Commission believes the payphone coin revenue derived from long distance calls to be negligible and will not disadvantage any class of telecommunications carrier.

9. Thus, the providers and consumers of local payphone coin services will continue to contribute to universal service in a fair and equitable manner. Accordingly, the NUSF remittance worksheet will be revised to reflect this modification.

#### **D. Pre-Paid Calling Cards**

10. The Commission denies the request to exempt pre-paid calling cards from assessment of the NUSF surcharge. Unlike payphone coin services, an acceptable substitute was not proposed nor could one be identified by the Commission. Exempting pre-paid calling cards from the NUSF surcharge, would result in the providers and consumer of pre-paid calling card services not contributing to universal service. As a result not all telecommunications service providers would be making fair and equitable contributions to the NUSF and thus such an exemption would violate Federal and State law.

11. Parties also argue that exempting pre-paid calling cards would have a de-minimis impact on the NUSF. Based on testimony provided by AT&T in this matter, exempting pre-paid calling cards would result in a reduction of more than \$100,000 per year in remittances to the NUSF. Moreover, the Commission believes that the use of pre-paid calling services is a fast growing segment of the telecommunications market and exempting these services from the NUSF surcharge will have a significantly larger impact in the future. Therefore, the Commission rejects assertions that exempting pre-paid calling cards from the NUSF surcharge will have a de-minimis impact of the NUSF.

12. AT&T noted the Nebraska Legislature removed the taxation of pre-paid calling cards from the point of usage and, instead, placed it on the point of sale. This change does not represent an exemption of consumers of pre-paid calling cards from the requirement to pay Nebraska State Sales Tax, but simply changed the point of collection. Pre-paid calling cards can be sold by any of the thousands of retailers in the state. These retailers already, in most cases, collect Nebraska State Sales Tax on other services and products they provide. As a result, simply requiring these retailers to also bill and collect the Nebraska State Sales Tax on pre-paid calling cards will result in little additional burden. However, the vast majority of these retailers do not and are not required to bill and collect the NUSF surcharge on any services. Imposing NUSF billing and collecting requirements on all retailers that sell pre-paid calling cards would result in the imposition of an unfair burden on many small businesses. Therefore, the model adopted by the Nebraska Legislature, relative to the collection of Nebraska State Sales Tax at the point of sale, does not represent an acceptable alternative to collecting the NUSF surcharge on pre-paid calling cards at the point of usage.

#### **E. Schools, Libraries, and Healthcare Institutions**

13. The Commission also rejects claims that schools,

libraries, health care, and other institutions are unfairly burdened by the NUSF surcharge. The NUSF surcharge was expressly designed to be assessed equally across all classes of customers to ensure that the responsibility of universal service is not unfairly placed on a subset of telecommunications users. The average customer of intrastate retail telecommunications services is no more able to budget for the NUSF surcharge than are these entities. Telecommunications customers in all rural areas of the state receive support from the NUSF. An exemption from the NUSF surcharge for customers that receive either federal or NUSF universal service support would place the responsibility solely on the urban areas of the state. This would result in an unfair and inequitable burden on those customers who do not receive universal service support. Ultimately, the NUSF surcharge assessed against any business or institution will be passed on to those that pay for the services rendered through higher prices or assessments. Accordingly, the Commission finds little merit in any arguments that certain institutions are unfairly burdened by the NUSF surcharge.

14. However, the Commission will seek comment specifically on assessing the NUSF surcharge on distance learning systems. The Commission has become aware that certain telecommunications carriers are not assessing the NUSF surcharge on telecommunications services provided for the purpose of distance learning. Companies that provide such service in conjunction with cable services argue that these distance learning services are not subject to the NUSF surcharge. The Commission disagrees based on the Commission's previous finding that these distance learning services are telecommunications services and subject to Commission requirements in Docket No. C-1485. Accordingly, the Commission tentatively concludes that all distance learning services are telecommunication services and should be subject to the NUSF surcharge, without regard to the type of network over which such services are provided. The Commission will hold a public hearing on this tentative conclusion on April 12, 2000, at 10:00am in the Commission Hearing Room.

#### **F. NUSF De-Minimis Exemption**

15. The Commission on its own motion adopted a de-minimis exemption for carriers whose monthly remittances were less than \$100 per month. Based on the findings contained in this order, the Commission tentatively concludes a de-minimis exemption is no longer warranted and all providers of intrastate retail telecommunications services should bill, collect, and remit the NUSF surcharge, effective July 1, 2000. A company whose total intrastate retail revenue subject to the NUSF surcharge is estimated to be less than \$20,000 for a given fiscal year shall not be required to remit on a monthly basis, but may remit on an annual basis to the NUSF as part of the end of fiscal year true-up. While such a company may remit on an annual basis, the surcharge shall be billed and collected on each bill sent to customers for intrastate retail telecommunications services subject to the NUSF surcharge. The Commission will hold a public hearing on this tentative conclusion on April 12, 2000, at 10:00am in the Commission Hearing Room.

#### **G. Centrex Station-to-Trunk Ratio**

16. The Commission further denies the request from the University of Nebraska-Lincoln (hereinafter the "University") that the Commission adopt a station-to-trunk ratio, similar to that adopted by the Federal Communications Commission (hereinafter, the "FCC") for assessing Federal subscriber line charges, for the purpose of determining the amount NUSF support assessed on Centrex services. The University notes the FCC has adopted a 9-to-1 station-to-trunk ratio standard for the purpose of treating Centrex users on a par with those owning a Private Automatic Branch Exchange, or PABX. The Federal subscriber line charge is assessed on a per-line basis. The FCC determined some inequity existed in the per-line treatment of Centrex lines with respect to PABX trunks. However, the NUSF surcharge is assessed on billed revenue, not on a per-line basis. The amount a customer pays for a service is indicative of the value the customer places on such service and of the telecommunication resources used in providing such service. For these reasons, the Commission adopted billed revenue as the basis for assessing the NUSF surcharge. Therefore, the Commission finds no merit in adopting an equivalency standard for Centrex lines relative to PABX trunks.

#### **H. Wireless Services**

17. The Commission also denies requests that wireless providers be exempted from the NUSF surcharge. The Commission finds that wireless service providers receive significant benefit from interconnecting to a robust and ubiquitous telecommunications network in Nebraska. The ability of wireless customers to contact, or be contacted by, the 96.0 percent of Nebraska households subscribed to basic local exchange telecommunications services supported by the NUSF, is of significant value to the consumers of wireless services. Moreover, exempting wireless providers from the NUSF surcharge would result in not all telecommunications service providers contributing in a fair and equitable manner to the NUSF and would thus violate both Federal and State law.

#### **I. Interstate Services**

18. The Commission declines, at this time, to reconsider its finding limiting the assessment of the NUSF surcharge to intrastate retail services. However, the Commission notes, with great concern, the FCC's continued lack of federal universal service support for the purpose of ensuring affordable basic local exchange rates and access to advanced services in Nebraska. Assuming that the FCC continues to assess interstate services provided to and from Nebraska for the purpose of providing support to more populous states while continuing to place the entire burden of the universal service requirements for Nebraska consumers contained in the Federal Telecommunications Act of 1996, on the NUSF, the Commission may well be forced to reconsider this limitation.

#### **J. Customer Benefit from Rate Reductions**

19. The Commission uniformly rejects all claims the NUSF

unfairly burdens customers who will not receive any benefit from the removal of implicit subsidies from instate long distance and certain basic local exchange services. Customers who do not receive benefit from these rate reductions either do not use these services or have been paying rates which are significantly lower than those the average customers have been paying. This does not mean that these customers are unfairly burdened by the NUSF surcharge. Rather, it means that these customers previously avoided any of the responsibility of universal service, while at the same time receiving the benefits of the telecommunications network in Nebraska. This resulted in other customers carrying an inequitably higher share of the universal service responsibility. All customers who subscribe to intrastate retail telecommunications services will now bear the responsibility for universal service in a fair and equitable manner.

#### **K. Analog to Digital Conversion**

20. The Commission also rejects assertions that the conversion of information from an analog to digital signal does not constitute telecommunications services as defined by Federal and State law as long as the signal is not converted back to an analog format. Both Federal and State Law, at 47 U.S.C. § 153(43) and Neb. Rev. Stat. § 86-1402(14) respectively, define telecommunications as "the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received." Certain parties assert that changing an analog signal to digital is a change in the "form" of the information. The Commission rejects this assertion. Nearly all information transmitted over Nebraska telecommunications networks undergoes analog and digital conversions, in some cases multiple times.

21. The parties that make this assertion provide no cites to either an FCC rule or court decision interpreting Federal law in this manner nor could any be identified by the Commission. Absent any relevant findings that specifically state that the conversion of an analog signal to digital result in a change in the "form" of the information, the Commission finds the assertions that these conversions exempt services from universal service requirements are without merit. Accordingly, telecommunication carriers shall bill, collect, and remit the NUSF surcharge on all intrastate retail telecommunications revenue without regard to any analog/digital conversions.

#### **L. Audit Requirements**

22. In response to recommendations from the Office of the Auditor of Public Accounts for the State of Nebraska, the Commission finds that information contained in the NUSF remittance worksheets submitted to the Commission should be subject to certain audit requirements. Accordingly, all companies whose revenues, subject to assessment of the NUSF surcharge, are greater than \$1,000,000 in a NUSF fiscal year, shall have all information used for the determination of intrastate retail telecommunications services revenue subject to the NUSF surcharge, audited on an

annual basis. This audit shall be performed by an independent third party, with audit results for a fiscal year being due before the end of the next fiscal year. The relevant information may be reviewed during the normal course of an annual audit and the results sent to the Commission. This will subject approximately 97.0 percent of revenues remitted into the NUSF to annual audit requirements.

**M. Joint State and Interstate Services**

23. The Commission reaffirms its finding that in cases where a charge is made for both intrastate and interstate services, and the interstate service is not charged separately or cannot be determined, the NUSF surcharge shall apply to the total charge. In the event, the interstate portion cannot be determined or such determination would result in an undue administrative burden, a company may request that the Commission approve an allocation factor for the purpose of determining the intrastate portion of a retail telecommunications service.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that payphone services providers shall not bill and collect the NUSF surcharge on calls placed using coins and the NUSF surcharge shall be assessed instead on the basic local exchange line provided to payphone services providers, effective July 1, 2000.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that a public hearing shall be held on April 12, 2000, at 10:00am in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska. The purpose of said hearing will be receive testimony on the Commission's tentative conclusions that distance learning services should be subject to the NUSF surcharge without regard to the type of network over which such services are provided, and that a de-minimis exemption is no longer justified.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that all companies are subject to the audit requirements as set forth herein. Accordingly, the audit results from the fiscal year from July 1, 1999 through June 30, 2000, shall be submitted on or before June 30, 2001.

IT IS FINALLY ORDERED by the Nebraska Public Service Commission that all other requests for modifications to the administration of the NUSF discussed herein are denied.

MADE AND ENTERED at Lincoln, Nebraska, this 28<sup>th</sup> day of March, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

Attest

Executive Director



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